Stratton VA Medical Center
IRB Standard Operating Procedure: Emergency Use of an Investigational Drug or Biologic

POLICY

It is Stratton VA Medical Center's policy to comply with all applicable federal, state, and local regulations, and ICH guidelines in the use of investigational drugs and biologics.

PROCEDURE

An attending physician who desires to use an investigational article on an emergency basis must obtain clearance. During normal business hours the Research Office should be contacted to arrange clearance from the IRB Chair or designee, or the hospital administrator on-call.

After business hours, when there is not enough time to wait until the next business day, the IRB Chair or designee, or hospital administrator on-call should be contacted directly.

The IRB Chair or designee will review the regulatory criteria with the attending physician to make sure that the emergency use and the intent to invoke the exception to the requirement to obtain consent for the use under the circumstances follows FDA regulations.

If time permits for a convened meeting of the IRB with a quorum, the IRB will consider approval of use.

If there is insufficient time to convene and IRB meeting, to provide clearance of the use of an investigational article without prior IRB approval, the IRB Chair or designee, or the hospital administrator on call must confirm that:

The attending physician affirms and will certify in the medical record that the subject is confronted by a life-threatening or severely debilitating situation necessitating the use of the investigational article, no standard acceptable treatment is available, and there is not sufficient time to obtain IRB approval.

The attending physician will obtain written informed consent from the subject [if the subject is 18 years old (NYS age of majority) or older and is mentally capable of giving consent], from the subject's legally authorized representative (if the subject is not mentally capable of giving consent), or document in the medical record the situation is exempt from consent as follows:

If time is sufficient to obtain the determination of an independent physician who is not participating in the clinical investigation, the independent physician will certify in the medical record that:

The subject is confronted by a life-threatening situation necessitating use of the test article.

Informed consent cannot be obtained because of an inability to communicate with, or legally obtain, effective consent from the subject.

Time is not sufficient to obtain consent from the subject's legally authorized representative.

No alternative method of approved or generally recognized therapy is available that provides an equal or greater likelihood of saving the subject's life.

If time is not sufficient to obtain the determination of an independent physician who is not participating in the clinical investigation:

The attending physician will certify all items are in the medical record.

The attending physician will certify in the medical record that informed consent cannot be obtained because of an inability to communicate with, or legally obtain consent from the subject's legally authorized representative.

The attending physician will certify in the medical record that time is not sufficient to obtain the determination of an independent physician who is not participating in the clinical investigation.

Within 5 business days after use of the article, the attending physician will have the determination reviewed and evaluated by an independent physician.

The attending physician should notify the subject directly of the emergency use once/or if the subject's condition permits.

The attending physician should notify the subject's legally authorized representative as soon as possible and obtain written consent to continue any procedures related to the investigational article.

The attending physician will forward a letter to the IRB Chair confirming the emergency use of the investigational article within 5 business days. The letter must be dated, identify the subject's initials including the subject's last 4 numbers of their social security number, briefly describe the subject's medical condition necessitating the use of the investigational article, and confirm the absence of a standard acceptable treatment. A copy of the consent document, if obtained, must be attached to the letter. This reporting must not be construed as an approval for the emergency use by the IRB. The IRB will review the report at the next scheduled IRB meeting and determine if the use met the FDA regulations for emergency use. The IRB determination will be documented in the meeting's minutes.

The IRB Chair will forward a letter to the attending physician acknowledging the receipt of the letter describing the emergency use of the investigational article and will request the attending physician present a new protocol submission to the IRB or a letter of explanation.

The attending physician, if applicable, will submit a protocol in time for the next deadline of the monthly IRB meeting.

The IRB Chair or designee, or hospital administrator on-call providing clearance after business hours will notify the Research Office of the emergency use verbally by, or on the next business day.

Attending physicians who fail to submit a letter to the IRB Chair confirming the emergency use of the investigational article within 5 business days or a new protocol submission to the IRB following emergency use of an investigational article become ineligible to submit new protocols to the Stratton VAMC IRB, and will be reported to oversight agencies if appropriate.

Attending physicians remain ineligible until a new protocol submission or letter of explanation is received and approved by the IRB.

Currently approved research is not affected by an attending physician's ineligible status.

The list of ineligible attending physicians will be distributed to IRB members with the agenda and included with the meeting minutes.

Attending physicians will be notified of their ineligible status in the Notification of Ineligibility.

The IRB Chair or designee may remove attending physicians from the ineligible list when the attending physician cannot comply with the requirements to submit a new protocol due to circumstances beyond his or her control. Such circumstances may include, but are not limited to, interim approval of the drug, device, or biologic by the FDA or non-cooperation by the sponsor. In this case, the IRB Chair or designee will accept a letter from the attending physician stating the circumstances.

The need for an investigational drug that does not as yet have an IND may arise in an emergency situation that does not allow time for submission of an Investigational New Drug (IND) application. In such a case, the FDA may authorize shipment of the test article in advance of the IND submission. Attending Physicians may request such authorization by contacting the FDA using the FDA Emergency Use Phone Number List.

Emergency Use of an investigational drug or biologic by an attending physician will be included as a business item in the next scheduled IRB meeting agenda. The IRB will review the report at the next scheduled IRB meeting and determine if the use met the FDA regulations for emergency us. The IRB determination will be documented in the meeting's minutes.

Information Sheet

Emergency Use of Investigational Drug or Biologic at the Stratton VAMC:

1. Obtaining an Emergency IND

The emergency use of an unapproved investigational drug or biologic requires an IND. If the intended subject does not meet the criteria of an existing study protocol, or if an approved study protocol does not exist, the usual procedure is to contact the manufacturer and determine if the drug or biologic can be made available for the emergency use under the company's IND.

The need for an investigational drug or biologic may arise in an emergency situation that does not allow time for submission of an IND. In such a case, FDA may authorize shipment of the test article in advance of the IND submission. Requests for such authorization may be made by telephone or other rapid communication means. (21 CFR 312.36).

Emergency use is defined as the use of an investigational drug or biological product with a human subject in a life-threatening situation in which no standard acceptable treatment is available and in which there is not sufficient time to obtain IRB approval [21 CFR 56.102(d)]. The emergency use provision in the FDA regulations [21 CFR 56.102(d)] is an exemption from prior review and approval by the IRB. The exemption, which may not be used unless all of the conditions described in 21 CFR 56.102(d) exist, allows for one emergency use of a test article without prospective IRB review. FDA regulations require that any subsequent use of the investigational product at the institution have prospective IRB review and approval. FDA acknowledges, however, that it would be inappropriate to deny emergency treatment to a second individual if the only obstacle is that the IRB has not had sufficient time to convene a meeting to review the issue.

2. Institutional Procedures may require that the IRB be notified prior to such use; however, this notification should not be construed as an IRB approval. Notification should be used by the IRB to initiate tracking to ensure that the investigator files a report within the five day time-frame required by 21 CFR 56.104(c).

3. An IRB must either convene and give "full board" approval of the emergency use or if the full conditions of 21 CFR 56.102(d) are met and it is not possible to convene a quorum within the time available, the use may proceed without IRB approval.

4. Exception from Informed Consent Requirement

Even for an emergency use, the investigator is required to obtain informed consent of the subject or the subject's legally authorized representative unless both the investigator and a physician who is not otherwise participating in the clinical investigation certify in writing all of the following [21 CFR 50.23(a)]:

a. The subject is confronted by a life-threatening situation necessitating the use of the test article.

b. Informed consent cannot be obtained because of an inability to communicate with, or obtain legally effective consent from the subject's legal representative.

c. Time is not sufficient to obtain consent from the subject's legal representative.

d. No alternative method of approved or generally recognized therapy is available that provides an equal or greater likelihood of saving the subject's life.

5. The investigator must notify the IRB within 5 working days after the use of the test article [21 CFR 50.23 (c)}.